

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

Crl.MC.No. 3880 of 2006()

CC.180/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR
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PETITIONER: ACCUSED:

P.K. GOPALAKRISHNAN,
S/O.KUNHIRAMAN NAIR, AGED 63 YEARS,
'SREYAS', PODIKUNDU, PALLIKUNNU P.O.,
KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS:COMPLAINANT & STATE

1. P. NARAYANAN NAIR, S/O.GOPALAN NAIR,
RAMALAYAM, KUTTIKKAKOM P.O.,
EDAKKAD, KANNUR.

2. STATE OF KERALA, REPRESENTED BY ITS
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

CrI.M.C.NO.3880 OF 2006

Dated this the 28th day of November, 2006.

ORDER

The petitioner faces indictment in a prosecution under Sections 323 & 325 I.P.C. The crux of the allegations against the petitioner is that he assaulted the victim/complainant, a person aged about 74 years, resulting in grievous hurt to the complainant. The alleged incident took place on 04.07.2005.

2. First information report was registered by the police. After investigation, the police had filed a final report to the learned Magistrate reporting that the allegations were false. It is thereafter that a private complaint was filed by the complainant dissatisfied about the police investigation. A copy of the complaint is produced as Annexure-F. Annexure-F reveals the allegations against the petitioner. It also shows that the respondent/complainant had produced the accident register cum wound certificate, which allegedly shows that the complainant had suffered grievous hurt. The learned Magistrate considered the complaint. He recorded the sworn statement of the complainant and two witnesses. Copies of those sworn statements are also produced as annexures in this petition. The learned Magistrate thereupon found that there is

sufficient ground to proceed against the accused. Accordingly process was issued to the petitioner under Section 204 Cr.P.C. It is at that stage that the petitioner had rushed to this court with this Crl.M.C. praying that the proceedings against him may be quashed.

3. The learned counsel for the petitioner submits that the allegations against the petitioner are totally false. Truth or falsity of the allegations cannot evidently be attempted to be decided at this stage of the proceedings under Section 482 Cr.P.C. I note particularly that there is no specific contention that the victim had not suffered any grievous hurt. At any rate, the wound certificate which is produced before the court below, on the basis of which cognizance has been taken under Section 325 Cr.P.C, is not placed before this Court for perusal. The complaint appears to have been filed by the victim and the police after investigation had filed a refer report, a copy of which is produced as Annexure-D. Annexure-D final report has been perused by me. Less said about the final report in this prosecution, the better. The report does not even show whether the victim had suffered any hurt or whether such hurt is a grievous hurt. The contention that Annexure-D must have prevailed on the learned Magistrate not to issue process under Section 204 Cr.P.C, cannot also in these circumstances succeed. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the

allegations. Suffice it to say that I am not persuaded to agree that this is a fit case where invoking the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C, the proceedings initiated against the petitioner deserve to be quashed.

4. The learned counsel for the petitioner prays that the petitioner may be permitted to claim discharge. No permission of this Court is required for the petitioner to claim discharge. He can at his option claim discharge under Section 245(2) Cr.P.C. He can also take part in the proceedings at the stage of Section 244 Cr.P.C and claim discharge under Section 245(1) Cr.P.C. The petitioner's right to claim discharge under Section 245(1) & 245(2) Cr.P.C does not certainly depend on any permission granted by this Court. The petitioner, needless to say, can claim discharge under Section 245(1) or 245(2) Cr.P.C. If the circumstances justify such request, the learned Magistrate shall consider such request and pass orders.

5. The learned counsel for the petitioner submits that the petitioner is aged about 60 years and that if personal appearance of the petitioner on all dates of posting were insisted, it would work out great injustice and prejudice to the petitioner. The petitioner, can undoubtedly pray for exemption from personal appearance. I have no reason to assume that the learned Magistrate would unnecessarily insist on the personal appearance of the petitioner on all dates of

posting. No specific or special direction appears to be necessary. The learned Magistrate must consider such application for exemption, if any filed, on merits and expeditiously.

6. This CrI.M.C is, in these circumstances, dismissed, but subject to the above observations/directions.

**R.BASANT
JUDGE**

rtr/